

Opinion No. 97-41

BEFORE THE NEVADA COMMISSION ON ETHICS

**In the Matter of the Request for Opinion concerning the conduct of
WENDELL WILLIAMS, Nevada State Assemblyman and City of Las Vegas employee; JAN JONES, Mayor,
Las Vegas; MATTHEW CALLISTER, Member, Las Vegas City Council; and CATHY HANSON, City of Las
Vegas employee**

This Opinion is in response to a third-party request for opinion filed with the Nevada Commission on Ethics (Commission) by Clyde Dinkins concerning the conduct of Wendell Williams, Jan Jones, Matthew Callister and Cathy Hanson. A public hearing on the opinion request was held by the Commission on September 26, 1997, in Las Vegas, Nevada. Mr. Dinkins, Mr. Williams, Mr. Callister and Ms. Hanson appeared and testified. Based on the testimony and evidence presented at the hearing, the Commission makes the following Findings of Fact, Conclusions, and Opinion.

FINDINGS OF FACT

1. At all times pertinent to this matter, Wendell Williams was a Nevada State Assemblyman and was also employed by the City of Las Vegas as a senior management analyst.
2. At all times pertinent to this matter, Jan Jones was the Mayor of Las Vegas.
3. At all times pertinent to this matter, Cathy Hanson was employed by the City of Las Vegas as a mayoral assistant. Near the end of the 1997 legislative session, Ms. Hanson attended the legislature in place of a City of Las Vegas lobbyist who had become ill.
4. Prior to the June 1997 election, Matthew Callister was a Las Vegas City Councilman. Mr. Callister was defeated in that election and his term as a councilman expired that month. In his private capacity, Mr. Callister was a lobbyist for IBM and the Nevada Resort Association during the 1997 legislative session and was specifically tasked with lobbying against a bill which would tighten judicial scrutiny of matters involving eminent domain.
5. On July 25, 1997, Mike Zapler reported in the *Las Vegas Review-Journal* that Mr. Williams had alleged his job with the City of Las Vegas had been "threatened" or "intimidated" (Mr. Zapler's words) by Matthew Callister and Cathy Hanson during the 1997 legislative session. The articles asserted that Mr. Callister and Ms. Hanson, on separate occasions, informed Mr. Williams his job would be in jeopardy if he were to support legislation intended to limit the use of eminent domain, a bill which was strongly opposed by the City of Las Vegas and the gaming industry.
6. Mr. Williams told the Commission that the Las Vegas City Council also opposed a bill which would expand the number of council seats on the Las Vegas City Council.
7. Mr. Williams testified that during a conversation with Mr. Callister regarding Mr. Williams' support of expansion of the Las Vegas City Council, Mr. Callister told him the Mayor was the only reason he was still employed by the City because the other councilmembers were not supportive of the bill. Mr. Callister's recollection of that conversation was that he advised Mr. Williams he did not believe expansion of the City Council would achieve the goals Mr. Williams desired, that the Council did not uniformly support mandatory, immediate expansion of the Council, and that a couple "of those guys" (meaning the city councilmembers) would probably not like Mr. Williams' position on the matter.

8. Mr. Callister testified he did not lobby Mr. Williams much on the eminent domain issue because he knew Mr. Williams' position was firmly in opposition to his. However, at Mr. Williams' request, he did prepare an amendment to the eminent domain bill to strengthen employment obligations of companies relocating in redevelopment areas.

9. All of these conversations between Mr. Callister and Mr. Williams occurred after Mr. Callister had left the City Council.

10. Mr. Williams testified that he spoke with Ms. Hanson following the vote in committee on the eminent domain issue. Ms. Hanson informed him that certain city councilmembers were unhappy with his position on the issue and might want to fire him, but that Mayor Jones was not among them. Following that conversation, Mr. Williams contacted his supervisor at the City and discussed the matter with her. He also discussed the matter with Mayor Jones.

11. Ms. Hanson testified she went to Mr. Williams and asked if the amendment Mr. Callister had drafted for him on the eminent domain bill was sufficient. They spoke briefly about the matter and the conversation turned to the city council expansion bill. Mr. Williams expressed his support for mandatory expansion, and Ms. Hanson advised him she knew "people" didn't like the bill, but that Mayor Jones wanted him to know she understood he was an independent assemblyman and needed to vote the way he thought he should. Ms. Hanson stated she never told Mr. Williams that his employment with the City might be in jeopardy if he did not do what the city council wanted.

12. Mr. Williams testified that he did not feel threatened by any statements made by Mr. Callister or Ms. Hanson regarding his employment with the City of Las Vegas, however, he felt it was inappropriate for them to mention his employment during discussions of his legislative duties. He stated that comments about his employment were made on several occasions throughout the legislative session.

13. With respect to what he told reporters concerning the alleged threats, Mr. Williams denied telling the press that Mr. Callister had said, "if you do this, trust me, you'll be fired," or that Ms. Hanson had said something of similar import. He said he told the press exactly what he testified to at the hearing before the Commission. He spoke to the press, not because he felt threatened by remarks that had been made by city officials, but because he felt legislators who are employed in public offices should not have to worry about their employment while attending the legislature. Mr. Williams explained that he did not know if Mr. Callister or Ms. Hanson made the remarks in an attempt to influence his vote, but he was not influenced by their remarks.

ANALYSIS AND OPINION

The Commission has jurisdiction over this matter pursuant to NRS 281.465(1)(a) and 281.511(2)(b). Mr. Williams is a public officer as defined in NRS 281.4365, and a public employee as defined in NRS 281.436. Ms. Jones is a public officer as defined in NRS 281.4365. Ms. Hanson is a public employee as defined in NRS 281.436.

Testimony given at the hearing on this matter established that at the time of the alleged incidents, Mr. Callister was no longer a public officer, as he was no longer a Las Vegas City Councilman. Therefore, the Commission does not have jurisdiction over Mr. Callister in this matter and is precluded from opining on his alleged misconduct.

Although Ms. Jones was named in the original opinion request received by the Commission, no allegations were made nor testimony received against Ms. Jones at the hearing before the Ethics Commission. Therefore, the Commission finds that Ms. Jones should be dismissed from this matter.

Accordingly, the sole remaining issue presented in this matter is whether Ms. Hanson violated NRS 281.481(2)^[1] by using her position to attempt to influence Mr. Williams to vote on legislation before the Nevada legislature in a manner which was favorable to the objectives of the Las Vegas City Council.

Mr. Williams is employed by the City of Las Vegas as a senior management analyst. His position is approved by the Las Vegas City Council and he reports to the City Manager. The mayor is a member of the City Council. At the time of the alleged incidents, Ms. Hanson was employed in the mayor's office. During the time Ms. Hanson was filling in for the City's main lobbyist at the legislature, she had occasion to discuss with Mr. Williams two bills which were on the legislative floor, one which affected eminent domain, and another relating to expansion of the Las Vegas City Council, both of which the City Council, or at least some of its members, opposed. During that conversation, Ms. Hanson advised Mr. Williams that there were people on the Council who did not like his position on the council expansion bill. Mr. Williams stated that although some people might consider what Ms. Hanson told him to be a threat which might influence them to change their vote, her remarks did not make him feel threatened nor influence his vote on the issues. Ms. Hanson denied threatening or attempting to influence Mr. Williams.

The only information available to the Commission which would indicate Mr. Williams felt threatened by any remarks made by Ms. Hanson were the Review-Journal articles. Unfortunately, Mr. Zapler, the reporter who wrote the stories, was prevented from standing behind his reportage. Mr. Zapler was at the hearing, and he told the Commission that he would testify if he was subpoenaed to do so. When the Commission served with him with a subpoena, he refused to testify under direction of his editor and on advice of counsel for the Review-Journal.

We find the *Review-Journal's* refusal to stand behind its story disconcerting. Contrary to the broad assertion by the *Review-Journal* that NRS 49.275^[2] compelled their intransigence, we must point out that NRS 49.275 is permissive, not mandatory. While it is surely good public policy that the press cannot be **compelled** to testify regarding its reportage, nothing in NRS 49.275 **prevented** the *Review-Journal* from allowing Mr. Zapler to answer a few simple questions that would have assisted the Commission in determining the witnesses' credibility. The Commission's request for Mr. Zapler's testimony would not have compromised any "source" because Mr. Zapler's "source" was Mr. Williams himself. While we can understand the *Review-Journal's* reluctance to allow its reporters to become embroiled in legal actions, it is ironic that Review-Journal's unbending policy did not protect Mr. Zapler, but, instead, exposed Mr. Zapler to a perception, fair or not, that his reporting was less than credible.

Nonetheless, based upon the record made at our hearing, we must conclude that Ms. Hanson did not violate NRS 281.481(2) because there is no credible evidence in our record to show that Ms. Hanson threatened Mr. Williams' job with the city of Las Vegas if he did not support the Las Vegas City Council's position on two legislative issues then before Mr. Williams. While we find Mr. Williams' statements to be muddled and self-contradictory in general, we cannot find that a threat occurred because Mr. Williams himself seems, apparently, to deny it, and there is no other evidence before us to support such a finding. We cannot find, as the *Review-Journal* suggested, that the newspaper article is self-authenticating. While the provisions of NRS 49.275 provide a great deal of protection to the press, they do not confer infallibility.

CONCLUSION

Based upon the record, the Commission concludes that Ms. Hanson did not violate NRS 281.481(2) through her discussions with Mr. Williams which were the subject of this opinion request.

COMMENT

It is specifically noted that the foregoing Opinion applies only to these specific facts and circumstances. The provisions of the Nevada Revised Statutes quoted and discussed above must be applied on a case-by-case basis, with results which may vary depending on the specific facts and circumstances involved.

DATED: June 3, 1998.

NEVADA COMMISSION ON ETHICS

By: /s/ MARY E. BOETSCH, Chairwoman

[1] NRS 281.481(2) provides:

A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any member of his household, any business entity in which he has a significant pecuniary interest, or any other person.

[2] NRS 49.275 provides:

No reporter, former reporter or editorial employee of any newspaper, periodical or press association ...may be required to disclose any published or unpublished information obtained or prepared by such person in such person's professional capacity in gathering, receiving or processing information for communication to the public, or the source of any information procured or obtained by such person, in any legal proceedings, trial or investigation:

3. Before any department, agency or commission of the state.